§ 34.4 Medical notifications.

(a) Medical examiners shall issue medical notifications of their findings of the presence or absence of Class A or Class B medical conditions. The presence of such condition must have been clearly established.

(b) Class A medical notifications. (1) The medical examiner shall report his/her findings to the consular officer or the INS by Class A medical notification which lists the specific condition for which the alien may be excluded, if an alien is found to have:
    (i) A communicable disease of public health significance;
    (ii)(A) A physical or mental disorder, and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or
    (B) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;
    (iii) Drug abuse or addiction.

Provided, however, That a Class A medical notification of a physical or mental disorder, and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(b) Class A medical notifications. (2) The medical notification shall state the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(c) Class B medical notifications. (1) If an alien is found to have a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being, the medical examiner shall report his/her findings to the consular or INS officer by Class B medical notification which lists the specific conditions found by the medical examiner. Provided, however, that a Class B medical notification shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(d) Other medical notifications. If as a result of the medical examination, the medical examiner does not find a Class A or Class B condition in an alien, the medical examiner shall so indicate on the medical notification form and shall report his findings to the consular or INS officer.

42 CFR Ch. 1 (10–1–11 Edition)
§ 34.8 Reexamination; convening of review boards; expert witnesses; reports.

(a) The Director shall convene a board of medical officers to reexamine an alien:

(1) Upon the request of the INS for a reexamination by such a board; or

(2) Upon an appeal to the INS by an alien who, having received a medical examination in connection with the determination of admissibility to the United States (including examination on arrival and adjustment of status as provided in the immigration laws and regulations) has been certified for a Class A condition.

(b) For boards convened to reexamine aliens certified as:

(1) Having a communicable disease of public health significance, the board shall consist of three medical officers, at least one of whom is experienced in the diagnosis and treatment of the communicable disease for which medical notification has been made, and the decision of the majority of the board shall prevail;

(2)(i) Having a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(ii) Having a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(iii) Being a drug abuser or addict;

(3) In circumstances covered by paragraph (b)(2) of this section, the board shall consist of three medical officers, at least one of whom shall be a board certified psychiatrist, and the decision of the majority of the board shall prevail.

(c) Reexamination shall include:

(1) Review of all records submitted by the alien, other witnesses, or the board;

(2) Use of any laboratory or additional studies which are deemed clinically necessary as a result of the physical examination or pertinent information elicited from the alien’s medical history;

(3) Consideration of statements regarding the alien’s physical or mental condition made by a physician after his/her examination of the alien; and

(4) An independent physical or psychiatric examination of the alien performed by the board, at the board’s option.

(d) An alien who is to be reexamined shall be notified of the time and place of his/her reexamination not less than 5 days prior thereto.

(e) The alien, at his/her own cost and expense, may introduce as witnesses before the board such physicians or medical experts as the board may in its discretion permit; provided that the alien shall be permitted to introduce at